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In re Application of :
CRAIG, Randall H. :
U.S. Application No.: 09/763,250 :
PCT No.: PCT/US99/27771 :
Int. Filing Date: 22 November 1999 :
Priority Date: 15 June 1999 :
Attorney Docket No.: HRCMP002USNP :
For: APPARATUS FOR CALCULATING :
TIME PERIODS :

DECISION

UNDER 37 CFR 1.10(c)

This decision is in response to the documents titled "Request for Corrected Filing Date" submitted by applicant via facsimile on 06 March 2001 which is treated as a petition under 37 CFR 1.10(c). No fee is required.

BACKGROUND

On 22 November 1999, applicant filed international application PCT/US99/27771 claiming priority to a United States patent application filed 15 June 1999. A Demand for the international preliminary examination was not filed. Accordingly, the twenty-month period for paying the basic national fee in the United States expired at midnight on 15 February 2001.

On 15 February 2001, applicant filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 using Express Mail. The United States Designated/Elected Office (DO/EO/US) listed the date of receipt of these documents as 16 February 2001.

On 06 March 2001, applicants filed the instant petition which was accompanied by *inter alia*, a copy of Express Mail label No. EL556131513US, and a copy of the USPS Track/Confirm page for Express Mail No. EL556131513US.

DISCUSSION

Any correspondence received by the Patent and Trademark Office delivered by "Express Mail" will be considered filed in the office on the date of deposit with the USPS. 37 CFR 1.10(a). Moreover, 37 CFR 1.10(c) states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee"

service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date - in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date - in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date - in," and of any other official notation by the USPS relied upon to show the date of deposit.

In the instant petition, applicant submitted a copy of Express Mail label No. EL556131513US which has a "Date In" listed as "2 15 01." The aforementioned Express Mail label is also located in the above-identified file and is stamped by the USPTO Mail Center as received on "FEB 15 2001." In addition, the transmittal letter (Form PTO-1390) lists the Express Mail label number at the bottom of the first page. Moreover, the USPS Track/Confirm page also confirms that Express Mail No. EL556131513US was accepted by the USPS on "February 15 4:35 p.m."

In light of the evidence, it appears that the DO/EO/US erroneously listed the 35 U.S.C. 371(c) date as 16 February 2001.

CONCLUSION

The petition to correct the filing date pursuant to 37 CFR 1.10(c) is GRANTED.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing including issuing a corrected filing receipt indicating a 35 U.S.C. 371(c) date of 15 February 2001.


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